



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------|---------------------|------------------|
| 10/529,769  | 03/30/2005  | Guy Druene             | 05047               | 1494             |
| 23338 7590 07/10/2009<br>DENNISON, SCHULTZ & MACDONALD<br>1727 KING STREET<br>SUITE 105<br>ALEXANDRIA, VA 22314 |             |                        |                     |                  |
| EXAMINER<br>ELOSHWAY, NIKI MARINA   |             |                        |                     |                  |
| ART UNIT<br>3781  |             | PAPER NUMBER           |                     |                  |
| MAIL DATE<br>07/10/2009   |             | DELIVERY MODE<br>PAPER |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/529,769

**Applicant(s)**

DRUESNE ET AL.

**Examiner**

NIKI M. ELOSHWAY

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 3-13, 15, 17-19, 21 and 25-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 14, 16, 20, 22-24 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Species D(3) (claims 22-24) in the reply filed on April 24, 2009 is acknowledged.
2. Claims 3-13, 15, 17-19, 21 and 25-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 24, 2009.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 2, 14, 16, 20, 22-24 and 36-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are considered vague and indefinite for the following reasons:
  - (a) Regarding claims 1, 14, 16, 20, 22 and 24, the phrase following the term "typically" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. (See claim 1 lines 2, 5, 7, 8, 15, 17, 26, 27; claim 14 line 4; claim 16 line 5; claim 20 line 4; claim 22 line 4; claim 24 line 5.)
  - (b) The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 14, 16 and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nottingham et al. (U.S. 2002/0195471). Nottingham et al. teach a lid 100, 150 that will close a receptacle 50 for paint (paragraph [0002]). The lid has a dish 150 with a peripheral strip at 152 fixed to the dish and provided with an outer edge, shown at lead line 150 in figure 4A and 4D. The outer edge cooperates in a sealed manner with the upper ring of the receptacle. The dish comprises a sidewall at 176 and a bottom at 164, a part of the wall forming a pouring spout 160. The pouring spout extends above the peripheral strip, as shown in figure 4D. The bottom comprises an orifice defined by 151 and 158. The opening is sufficient to allow for passage of an instrument therethrough. Nottingham et al. also teach a lid 100 which rotatably and removably engages the receptacle neck via threads such that the lid seals the opening of the dish. The lowermost portion of the spout, as shown in figure 4D extends at an angle of less than 90 degrees with respect to the horizontal plane. The gripping means is element 120.

Nottingham et al. do not teach the exact dimensions of the lid. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Nottingham et al. with the area  $S'$  being between 0.1S and 0.9S, the dimension  $D'$  being between 0.1D and 0.9D, the area  $S''$  being between 0.1S' and 0.9S' and the dimension  $D''$  being between 0.1D' and 0.9D', since it has been held that a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 14, Nottingham et al. do not teach the height of the spout. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Nottingham et al. with the spout having a height from 5mm to 30mm and the distance d being from 1 to 50mm, since it has been held that a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claims 1, 20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens (U.S. 6,983,869). Stevens teaches a lid 10 that will close a receptacle for paint (col. 3 lines 4-10). The lid has a dish 20 with a peripheral strip at 21 fixed to the dish and provided with an outer edge, shown at lead line 22. The outer edge cooperates in a sealed manner with the upper ring of the receptacle. The dish comprises a sidewall at 25 and a bottom at lead line 23, a part of the wall forming a pouring spout at 26. The pouring spout extends above the peripheral strip, as shown in figure 2. The bottom comprises an orifice shown circular in figure 4. The opening is sufficient to allow for passage of an instrument therethrough. Stevens also teaches a lid 30 which removably engages the dish rim, as shown in figure 3. The inner projection of the dish is shown at lead line 27 in figure 3. The auxiliary stacking means may be the portion 25 of the dish but not including spout 26.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the dish and cap.

9. THIS ACTION IS NON-FINAL.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/  
Niki M. Eloshway  
Examiner  
Art Unit 3781

nmc